

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HY-KO PRODUCTS COMPANY)	Civil Action No. 5:08cv1961(Lioi)
)	
Plaintiff,)	
Counterclaim Defendant,)	JUDGE LIOI
vs.)	
)	PROPOSED SCHEDULING ORDER
THE HILLMAN GROUP, INC.)	
)	
Defendant,)	
Counterclaim Plaintiff)	

Pursuant to Fed. R. Civ. P. 26(f) and L.R. 16(b)(3) a scheduling conference was held on October 9, 2008, attended by Christopher Isaac and Daniel Gourash for The Hillman Group, Inc. and Jud Scheaf, Megan Dortenzo, and Gary Walters for Hy-Ko Products Company. There were several follow-up communications to coordinate the filing of this Proposed Scheduling Order, including a telephone call on November 4, 2008 between Christopher Isaac and Gary Walters.

- (1) Lead Counsel for Plaintiff is Steven S. Kaufman.
- (2) Lead Counsel for Plaintiff is Christopher P. Isaac. *Pro hac vice* motion to be filed.
- (3) The parties will make initial disclosures as required by Fed. R. Civ. P. 26(a)(1) and the Court's prior orders on or before November 21, 2008, with documents to be produced pursuant to these disclosures not later than December 8, 2008.
- (4) The parties recommend the following track: Complex.
- (5) At this time, the parties do not believe Alternative Dispute Resolution proceedings would be effective. The parties believe a Mediation may be appropriate in the future and will report on this at the Status Conference proposed to be scheduled in the Summer of 2009.

(6) The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

(7) This action involves the question of whether or not certain Hy-Ko key-cutting machines infringe Hillman's U.S. Patent No. 7,114,894. As such, the issues of patent infringement and the validity of Hillman's patent will be before the Court. Hillman has alleged that Hy-Ko willfully infringed the Hillman patent, so the issue of willful infringement is also before the Court. Finally, this Court will also be presented with issues concerning monetary damages and the entry of a permanent injunction.

(8) Claims construction issues:

(a) Recommended date for defendant to submit to plaintiff a claims construction chart: May 15, 2009.

(b) Recommended date for plaintiff to respond in writing to defendant's claims construction chart: June 15, 2009

(c) Recommended date for the parties to file with the Court a joint claims construction chart: July 15, 2009

(d) Recommended date for the parties to file with the Court simultaneous briefs regarding any disputed claims construction issues: August 14, 2009

(e) Recommended date for the Court to conduct a claims construction hearing: October 1, 2009.

(f) Recommended areas of discovery to be stayed until after completion of the claims construction hearing: The parties recommend staying damages and willfulness discovery until after the claim construction hearing.

(9) Recommended date for amending the pleadings and/or adding additional parties: April 1, 2009.

(10) Recommended discovery plan:

(a) Describe the subjects on which discovery is to be sought and the nature and extent of discovery:

(1) Hillman: Hillman will need discovery on the design and operation of the accused Hy-Ko key-cutting machines. Hillman will also need discovery on the number of Hy-Ko's accused machines in the market and related financial information to determine the monetary damages to which it is entitled. Further with respect to infringement, Hillman will need discovery on whether Hy-Ko's infringement, if any, was willful. Finally, Hillman will need discovery concerning other entities involved with development of the accused infringing machines and may be amending its counterclaim to identify additional infringing parties from which discovery will be sought.

(2) Hy-Ko: Hy-Ko at this early date anticipates needing discovery from Hillman, including but not limited to: 1) circumstances surrounding conception, diligence, reduction to practice, filing and prosecution of the patent in suit; 2) inventorship and research and development activities of the inventors related to the patents; 3) prior art; 4) information respecting contacts of inventors with the key-cutting machine industry; 5) circumstances

surrounding any attempted or successful licensing; 6) information respecting sales and marketing efforts of and results achieved by Hillman, its parents and former parents, and other associated companies; 7) information respecting structure of the sales and marketing teams at Hillman, its parents and former parents and other associated companies; and 8) matters respecting competition and activities vis-à-vis competitors.

(b) Non-expert discovery cut-off date: August 14, 2009 for non-damages related discovery. January 15, 2010 for damages related discovery.

(c) Electronic discovery—the parties have elected to follow the default standard for discovery of electronically stored information (Appendix K to Local Rules of Northern District of Ohio).

(d) Plaintiff's deadline for disclosing in writing to defendant all prior art that plaintiff claims invalidates the patent in suit: April 1, 2009

(e) Proposed deadline for parties bearing the burden on infringement, damages, and validity, respectively, to identify expert(s) and provide reports to opposing counsel: February 15, 2010

(f) Proposed deadline for parties to identify responsive experts and provide responsive expert reports: March 15, 2010

(g) Proposed expert discovery cut-off date: April 15, 2010.

(11) Recommended dispositive motion plan:

(a) Dispositive motion deadline: May 3, 2010

(b) Opposition to dispositive motions deadline: May 24, 2010

(c) Replies in support of dispositive motions due: June 8, 2010

(12) Recommended deadline for [plaintiff] to notify [defendant] whether it will assert an advice-of-counsel defense to allegations of willful infringement: July 1, 2009

(13) Recommended date for a status hearing: July 30, 2009

(14) Recommended date for a final pre-trial conference: July 8, 2010

(15) Recommended trial date: August 2, 2010.

Respectfully Submitted,

/s/ Daniel F. Gourash
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IT IS SO ORDERED.

JUDGE

DATED: _____, 2008.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was electronically filed on November 7, 2008. A copy of the same will be served on counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system.

/s/ Gary L. Walters
*One of the Attorneys for Hy-Ko Products
Company*